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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0174]

[Docket 2012-0076; Sequence 64]

**Submission for OMB Review; Information Regarding
Responsibility Matters**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension, with changes, to an existing OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Information Regarding Responsibility Matters. A notice was published in the Federal Register at 78 FR 18593, on March 27, 2013. One comment was received.

DATES: Submit comments on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments identified by **Information**

Collection 9000-0174, Information Regarding Responsibility Matters, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0174, Information Regarding Responsibility Matters". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0174, Information Regarding Responsibility Matters" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Washington, DC 20405-0001. ATTN: Hada Flowers/IC 9000-0174, Information Regarding Responsibility Matters.

Instructions: Please submit comments only and cite Information Collection 9000-0174, Information Regarding Responsibility Matters, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC

20503. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, at (202) 219-0202 or Cecelia.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection is necessary to: (a) determine the responsibility of prospective contractors; and (b) ensure that contractors maintain for accuracy and completeness, their integrity and performance information upon which responsibility determinations rely.

Section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), enacted on October 14, 2008, required the development and maintenance of an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees. The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to address these requirements. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), as well as proceedings

information and suspension/debarment information from the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) functions in the System for Award Management (SAM).

The provision at FAR 52.209-7 requires that for each solicitation where the resultant contract value is expected to exceed \$500,000, the offeror responds in paragraph (b) as to whether or not it has active Federal contracts and grants that total greater than \$10,000,000. Only if the offeror responds affirmatively is there any further FAPIIS-related information collection requirement.

The clause at FAR 52.209-9 applies to solicitations where the resultant contract value is expected to exceed \$500,000 and to contracts in which the contractor indicated in paragraph (b) of the provision at 52.209-7 that it has current active Federal contracts and grants with total values greater than \$10,000,000. Paragraph (a) of the clause at 52.209-9 requires the contractor to update responsibility information on a semiannual basis, throughout the life of the contract, by posting the information in the System for Award Management (SAM).

B. Discussion and Analysis

1. The analysis of the public comment is summarized as

follows:

a. Necessity of the information collection requirement.

Comment: According to the respondent, agencies should be seeking to create savings by reducing or eliminating such information collection requirements. However, the respondent did not challenge the propriety of this underlying information collection requirement.

Response: The provision at FAR 52.209-7 requires that for each solicitation where the resultant contract value is expected to exceed \$500,000, the offeror responds in paragraph (b) as to whether it has, or has not, active Federal contracts and grants that total greater than \$10,000,000. Only if the offeror responds affirmatively is there any further FAPIIS-related information collection requirement. The clause at FAR 52.209-9 applies to solicitations where the resultant contract value is expected to exceed \$500,000 and to contracts in which the offeror has indicated in paragraph (b) of the provision at 52.209-7 that it has current active Federal contracts and grants with total values greater than \$10,000,000. Paragraph (a) of the clause at 52.209-9 requires the contractor to update responsibility information on a semiannual basis, throughout the life of the contract, by posting the information in the CCR. These requirements are

necessary. There are no aspects of this requirement that can be reduced or eliminated without negatively impacting the ability of the Government to assess contractor responsibility, investigate and address potential criminal actions, and protect the Government's interests in maintaining the integrity of the acquisition process.

b. OMB approval to extend the approval of this information collection requirement.

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because the analysis significantly underestimates the paperwork burden imposed by this requirement and has therefore not provided sufficient justification for the requested extension. The respondent further stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the "collective burden of compliance" required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

Response: The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for contractors to report responsibility requirements, regardless the number of responses. If the agencies have determined that the information is essential to protect the interests of the Government, then the extension should be approved.

c. Accuracy of data estimates.

Comment: The respondent commented that the agency did not accurately estimate the public burden, challenging that the agency's methodology for calculating the burden is insufficient and inadequate and does not reflect the total burden. The respondent stated that—

- With regard to the number of unique vendors with contracts valued over \$500,000 and the number of proposals received per solicitation, FPDS data was used and the respondent considers the estimate of .1 hours per initial response to be reasonable.
- However, the respondent is unclear as to why the Agencies abandoned this approach when estimating the number of unique vendors with total current, active Federal contracts and grants with total values greater than \$10,000,000. If actual data is unavailable, the

Agencies are required to do more than just declare, "It is estimated." The total burden hour estimates for the latter information collection requirement (506,313 hours) seems reasonable, but as the agencies have not provided a "specific, objectively supported estimate of burden" or clear explanation of its methodology, the exact burden estimate is unclear and the allocation is confusing. According to the notice's text, "[The Agencies] have used an average burden estimate of 100 hours to enter the company's data into the Web site. This time estimate also includes the average annual recordkeeping time necessary per respondent to maintain the company's information internally." However, the table then contradicts the text by assigning the 100 hours to the "recordkeeping burden" and then recognizing that entering the data will also take additional time, especially as the data must be entered into the new System Awards Management (SAM) system. According to the respondent, any change within SAM requires at least one hour of time: even one update will force the respondent to confirm the accuracy of every page, i.e. scroll down to the bottom and agree to every screen.

Response: The respondent found the overall burden estimate to be reasonable. However, based on Fiscal Year (FY) 2012 data, and in consultation with subject matter experts, the Councils have increased the burden hours for the initial input of data into SAM (.5 hours to 1 hour), and separated out the data to be input under the provision 52.209-7 from the subsequent 6-month updates under 52.209-9 and the required recordkeeping hours. This re-evaluation resulted in a slight adjustment from the data previously published in the Federal Register at 78 FR 18593, on March 27, 2013.

The Councils take this process seriously. In this particular instance, the burden was prepared using the burden hour's method taking into consideration the time, effort and financial resources put on the entity submitting the information. This includes reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated hours must also be viewed as an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex

disclosure by a major corporation. Also, it must be noted that the burden includes estimated hours only for those actions which a company would not undertake in the normal course of business.

d. Timing of request for extension.

Comment: The respondent noted that this information collection is soliciting comments during an emergency extension period OMB granted in March 2013. The respondent reiterated OMB's comment that the agencies should have in place an internal planning process so that completion of the public notification and comment period required by 5 CFR 1320 occurs prior to an information collection's expiration date. Regular order allows the agencies and the public to have a meaningful and on-the-record dialogue on information collection extensions.

Response: There are over 100 information collection requirements that require periodic renewal, of which more than half expired in FY 2013. Although ideally it is preferable to complete the renewal process prior to expiration, an emergency extension may be necessary in order to allow the public the opportunity for input into the process.

e. The collective burden of compliance.

Comment: The respondent objects to the overall collective burden imposed by the Government on all respondents.

Response: The Councils cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. The Councils can only effectively address each individual information collection requirement that is under consideration for OMB approval. The Councils constantly review information collection requirements imposed by FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute.

2. Annual Reporting Burden

This information collection reflects a slight adjustment from what was published in the Federal Register at 78 FR 18593, on March 27, 2013, for the number of respondents required to comply with the requirements of FAR 52.209-7 and FAR 52.209-9. This change is primarily due to a re-evaluation based on consultations with subject matter experts and updated data retrieved from the Federal Procurement Data System (FPDS).

For FAR 52.209-7, FY 2012 FPDS indicates that there were 26,327 contract awards. The Government estimates that

there was an average of 3 responses per solicitation, resulting in approximately 79,000 offers (26,327 x 3, rounded). Of the approximate 79,000 offers, the Government estimates that an average of five responses annually will be received by 15,800 unique vendors (79,000/5).

Consequently, it was determined that the FY 2012 FPDS data was a sufficient baseline for estimating the number of respondents. It is therefore estimated that approximately 15,800 respondents, 1,090 of which will not receive an award (15,800-14,710), would need to comply with the applicable provision for this information collection. The Government further estimates that one third of the unique vendors (5,250) submitting offers may answer the first question affirmatively, and then will have to enter data into the FAPIIS.

For FAR 52.209-9, FY 2012 FPDS indicates that there were 26,327 contract awards to 14,710 unique vendors. Approximately one-third (4,900) of those unique vendors may answer the first question (from FAR 52.209-7) affirmatively. Consequently, it was determined that for FAR 52.209-9, the FY 2012 FPDS data was a sufficient baseline for estimating the number of respondents per year (4,900) that would need to comply with FAR 52.209-9.

The estimate number of responses per respondent is based on an estimated average of the total number of responses for FAR 52.209-7 and FAR 52.209-9 divided by the estimated number of respondents. In discussions with subject matter experts, it was determined that an estimated number of responses per respondent of 5.95 was sufficient for this information collection.

a. FAR 52.209-7:

(i) Initial Response:

Estimated number of respondents:	15,800
Est. number of responses per respondent per year:	<u>x 5</u>
Total annual responses (rounded):	79,000
Estimated hours per response:	<u>0.1</u>
Total response burden hours:	7,900

(ii) Additional Response:

Estimated number of respondents:	5,250
Est. number of responses per respondent per year:	<u>x 1</u>
Estimated number of responses:	5,250
Estimated hours per response:	<u>x 1</u>
Estimated response burden hours:	5,250
Total response burden hours for FAR 52.209-7:	13,150

b. FAR 52.209-9:

Estimated number of respondents:	4,900
Est. number of responses per respondent per year:	<u>x 2</u>
Total annual responses (rounded):	9,800
Estimated hours per response:	<u>0.5</u>
Total response burden hours for FAR 52.209-9:	4,900

c. Total (a. + b.):

Total number of respondents:	15,800
Responses per respondent:	<u>x 5.95</u>
Total responses:	94,050
Hours per response:	<u>.19</u>

Total response burden hours: 18,050

3. Annual Recordkeeping Burden

Number of recordkeepers:	5,250
Hours per recordkeeper:	<u>x 100</u>
Total recordkeeping burden hours:	525,000

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, Washington, DC 20405-0001, telephone (202)501-4755. Please cite OMB Control No. 9000-0174, Information Regarding Responsibility Matters, in all correspondence.

Dated: September 5, 2013.

Karlos Morgan,
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